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REMARKS

Responsive to the Office Action mailed April 12, 2006, Applicant provides the following. The claims have been amended without adding new matter. Claims 1 and 12 have been amended and Claims 13-19 and 23-25 were previously canceled. Thus, fifteen (15) claims remain pending in the application: claims 1-12 and 20-22. Reconsideration of the present application in view of the amendments above and the following remarks is respectfully requested.

By way of this amendment, Applicant has made a diligent effort to place the claims in condition for allowance. However, should there remain any outstanding issues that require adverse action, it is respectfully requested that the Examiner telephone Thomas F. Lebens at (805) 781-2865 so that such issues may be resolved as expeditiously as possible.

Claim Objections

1. Claim 12 stands objected because of informalities. Applicant has amended claim 12 to replace "control server" with "server". Therefore, Applicant respectfully requests the object be withdrawn.

Claim Rejection under 35 U.S.C. §102

2. The office action has rejected claims 1-12 and 20-22 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,819,019 to Payton. Applicant respectfully traverses these rejections. The Payton patent fails to teach each limitation of at least independent claims 1, 10 and 20. More specifically, amended claim 1 for example recites in part:

a headend coupled to the transmission channel, said headend including a video server than can transmit one or more VOD sessions to one or more receivers, and a control server coupled to the video server, the control server ... to cause the video server to transmit one or more dummy sessions over the transport stream to maintain a predetermined minimum bandwidth of content over the transport stream.

The Payton patent fails to teach or suggest at least generating a dummy session or generating a dummy session to maintain a predetermined minimum bandwidth of content. Instead, the Payton

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patent describes a Video-on-Demand (VOD) system that addresses limitations on the bandwidth capabilities of digital transport systems by retrieving content during off peak times (see at least Payton, Abstract, FIG. 3c and accompanying description). The office action suggests that simply because Payton transmits recommended content, which has not been requested by subscribers, the Payton patent teaches creating dummy sessions (office action, pg. 3). The recommended content, according to Payton, are not dummy sessions, and further are not transmitted to maintain a predetermined minimum bandwidth of content. Instead, the transmission of recommended content is specifically transmitted during off peak times and transmitted in response to a specific request. Thus, the transmission of recommended content specifically attempts to avoid use of bandwidths during peak times and is not generated to maintain minimum bandwidths; and further is not dummy content.

The Payton system transmits "recommended content" when such content is present on the "refresh queue" 47 (Fig. 2). If, however, the load on the "on-demand queue" 49 (Fig. 2) is low, the system described in Payton only causes an increase in the menu selection available to the subscribers and does not transfer any new content (col. 7, lns 54-60). As such, the Payton patent does not suggest creating dummy sessions or dummy sessions to maintain a threshold bandwidth of content. As such, the Payton patent does not teach creating dummy sessions to maintain a minimum bandwidth of contents over the transport stream as claimed.

Further, the Payton patent specifically teaches away from creating additional dummy sessions. Specifically, the Payton patent describes spreading out the items requested by subscribers over time to address limited bandwidth capabilities (e.g., see at least col. 3, lns. 9-17 and 33-41, and col. 4, lines 8-22). Accordingly, the Payton patent teaches away from creating additional dummy sessions that would further limit the bandwidth available for transferring requested items. Therefore, the Payton patent does not teach or suggest each limitation of claim 1, and thus, claim 1 is not anticipated by the Payton patent.

Independent claims 10 and 20 recite similar claim language as recited in claim 1, for example, the "transmission of one or more padding sessions" (claim 10) and to "transmit one or more dummy sessions" (claim 20). Therefore, independent claims 10 and 20 are also not anticipated by the Payton patent at least for the same reasons described with regard to claim 1.

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Claims 2-9, 11-12 and 21-22 depend from independent claims 1, 10 and 20, respectively. Therefore, claims 2-9, 11-12 and 21-22 are also not anticipated by the Payton patent due at least in part to their dependence on allowable independent claims 1, 10 and 20.

Further with respect to at least claim 2, the Payton patent does not teach or suggest preventing receivers from decoding the dummy sessions as recited. As described above Payton does not teach creating dummy sessions, therefore Payton does not teach preventing the dummy sessions from being decoded by the central receiver. Thus, claim 2 is not anticipated by the Payton patent.

Claim 3 is also rejected over Payton, however, as described above the Payton patent fails to teach at least the transmitting of dummy sessions to maintain a minimum bandwidth of content over the transport stream to ensure that each receiver can synchronize to a subscribed VOD session. There is no suggestion in Payton that recommended content "ensure[s] that each receiver can synchronize to a subscribed VOD session". Instead, Payton only transmits recommended content to limit the bandwidth usage at peak times. Therefore, claim 3 is not anticipated by Payton since Payton fails to teach transmitting one or more dummy sessions.

Claim 4 recites that the control server determines "whether the bandwidth of content over the transport stream is below a predetermined threshold, and to cause the video server to transmit one or more dummy sessions, as necessary, to maintain the bandwidth of content at or above the predetermined threshold." As demonstrated above, the Payton patent fails to teach or suggest generating an additional session to maintain the bandwidth of the content at or above the predetermined threshold. Further, Payton does not teach or suggest determining whether the transport stream is below a threshold and to cause the transmission of dummy sessions when below the threshold to maintain the bandwidth above a threshold. Instead, Payton only transmits recommended content when available and during off peak times and does not transmit content when none is available. There is no suggestion to transmit dummy sessions to maintain the bandwidth above a threshold. Therefore, claim 4 is also not anticipated by the Payton patent.

In rejecting claim 6 the office action suggests that an encoder is inherently present in Payton "to have encoded the MPEG video" (office action, pg. 5 citing Payton col. 4, lines 59-64). However the Payton patent does not discuss encoding the video, and column 4, 1 lines 59-64

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states that "[t]he digital items are preferably stored in a compressed format to improve storage and transport efficiency. The Motion Picture Entertainment Group (MPEG2) compression algorithm provides approximately two orders of magnitude of video compression while maintaining sufficient signal quality." Payton does not teach that the content is encoded. Instead, the content is likely delivered to the system of Payton in an encoded format. As such, the Payton system does not need to perform any actual encoding. Thus, the Payton system does not teach an encoder. It would not be inherent that Payton include an encoder, and instead, it is likely that Payton does not include an encoder. Thus, claim 6 is not anticipated by the Payton patent.

Claim 9 recites in part "when control server receives a request for a new VOD session ... terminates one or more of the one or more dummy sessions...." The Payton patent does not teach generating dummy session, and therefore, does not teach terminating dummy session when new VOD sessions are requested. Therefore, at least claim 9 is not anticipated by the Payton patent.

Claims 12 and 21 recite language similar to that of claims 9 and 4, respectively. Thus, claims 12 and 21 are also not anticipated by the Payton patent for at least the reasons provided above.

3. The office action has also rejected claim 1 under as 35 U.S.C. §102(b) being anticipated by U.S. Patent No. 5,822,530 to Brown. Applicant respectfully traverses these rejections. The Brown patent specifically teaches away from the system as recited in amended claim 1. For example, amended claim 1 recites in part "the control server ... to cause the video server to transmit one or more dummy sessions over the transport stream to maintain a predetermined minimum bandwidth of content over the transport stream". The Brown patent instead attempts to determine whether a maximum number of VOD sessions are active and when a maximum number of sessions are active denies an additional VOD session and instead offers a derivative near video on demand (NVOD) session. Therefore, the Brown patent does not teach or suggest at least transmitting a dummy session to maintain a predetermined minimum, and

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instead teaches away from such operation by attempting to avoid exceeding a maximum, and thus amended claim 1 is not anticipated by the Brown patent.

Further, amended claim 1 provides that the control server generates "one or more dummy sessions". The Brown patent fails to teach or suggest generating a dummy session for any reason. The claimed control server as recited in amended claim 1 generates one or more dummy session to maintain a minimum bandwidth. The Brown patent fails to teach or suggest generating a dummy session and instead teaches away from generating dummy sessions in attempts to preserve bandwidth. Still further, the office action states that the generation of dummy sessions is not considered by the Brown patent. Applicant respectfully submits that claim 1 as amended provides that the control server generates dummy sessions to maintain a minimum bandwidth, and is thus part of the claim. The Brown patent fails to teach this limitation, and thus, amended claim 1 is not anticipated.

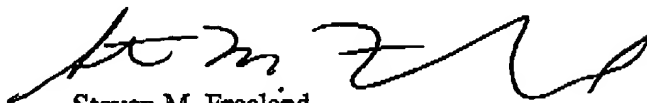
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CONCLUSION

In view of the above amendments and remarks, Applicant submits that the pending claims are in condition for allowance. Therefore, a Notice of Allowance is respectfully requested.

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Respectfully submitted,



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